



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
ONE CONGRESS STREET SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

December 30, 2008

**URGENT LEGAL MATTER - PROMPT AND COMPLETE REPLY IS REQUIRED
CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Sue Roberts, General Manager
Downeast Energy
288 River Street
Springvale, ME 04083

Re: Information Request
SPCC inspection of Downeast Energy on December 18, 2008
Docket # 09-308-019

Dear Ms. Roberts:

Our records show that Downeast Energy's Springvale Bulk Plant located at River Street in Springvale, Maine ("Facility"), was inspected by a representative of the U.S. Environmental Protection Agency ("EPA") on December 18, 2008. Based on information provided at that time, the inspector noted that this Facility did have a Spill Prevention, Control, and Countermeasure ("SPCC") Plan, dated July 2005, as required by the Oil Pollution Prevention Regulations at 40 C.F.R. Part 112, promulgated under Section 311 of the Clean Water Act, 33 U.S.C. § 1321, but may not be in compliance with the SPCC requirements. This was communicated to you by the inspector at an out-brief session on the day of the inspection. Additionally, a review of the SPCC plan indicates that the plan has not been fully implemented at the facility. Specifically, the following issues were observed:

- The bulk storage tanks may not be fully enclosed in the secondary containment area. A leak from the southern sides of the tanks appear as though it would drain away from the secondary containment, down River Street toward the Mousam River;
- Section 2 of the SPCC Plan indicates that security fencing or equivalent security measures for the bulk plant would be installed. Since the SPCC plan has not been modified to describe the as-built design and the Professional Engineer has not signed off on the final installation, the Plan is not consistent with the requirements of the Oil Pollution Prevention Regulations;
- Section 2 of the SPCC Plan indicates that overfill protection alarms will be activated. Since the SPCC plan has not been modified to describe the as-built design and the

Professional Engineer has not signed off on the final installation, the Plan is not consistent with the requirements of the Oil Pollution Prevention Regulations; and

- Section 2 of the SPCC Plan indicates that secondary containment will be provided for the 330-gallon #2 fuel oil tank. Since the SPCC plan has not been modified to describe the as-built design and the Professional Engineer has not signed off on the final installation, the Plan is not consistent with the requirements of the Oil Pollution Prevention Regulations.

Additional deficiencies to your facility's SPCC plan are noted on the copy of the United States EPA's SPCC Field Inspection and Plan Review Checklist which is included with this letter.

Under the authority of Sections 308 and 311(m) of the Clean Water Act, 33 U.S.C. §§ 1318 and 1321(m), you are hereby required to submit to EPA within thirty (30) calendar days of your receipt of this letter the following:

1. A statement detailing the actions taken by your Facility to correct the deficiencies specified above and in the attached inspection checklist. In the case of the secondary containment, if you believe that the tanks are within secondary containment, please provide documentation demonstrating conclusively that this is the case.
2. If, in order to correct the deficiencies, your Facility must revise your existing SPCC Plan, submit a copy of such revised SPCC Plan. If completion of the SPCC Plan revision is not feasible within thirty (30) calendar days, submit a detailed schedule of when it will be completed and fully implemented. The schedule should include the name, address, license number, and state of licensure of the registered professional engineer re-certifying the SPCC Plan. If the SPCC Plan or revision thereof calls for the construction of secondary containment at the Facility, the schedule should include construction milestone dates.
3. If you have determined that your Facility is no longer subject to the Oil Pollution Prevention Regulations at 40 C.F.R. Part 112, and is therefore not required to have an SPCC Plan, an explanation supporting such determination, including appropriate documentation.

Please note that if your Facility has an aboveground oil storage capacity of 10,000 gallons or less and meets the oil discharge history criteria as described in 40 C.F.R. § 112.3(g), you are no longer required to obtain professional engineer certification of the SPCC Plan. Instead, you may self-certify your Facility's SPCC Plan consistent with the requirements of 40 C.F.R. § 112.6. If you choose to self-certify, in addition to providing EPA with the self-certified SPCC Plan, provide an explanation (with documentation) supporting the determination that your Facility is a "qualified facility" as defined in 40 C.F.R. § 112.3(g).

The following additional information shall also be provided under the authority of Sections 308 and 311(m) of the Clean Water Act, 33 U.S.C. §§ 1318 and 1321(m), within thirty (30) calendar days of your receipt of this letter:

4. A list of additional facilities owned by the owner of the inspected Facility, including the name, location, and total number of employees at each facility. If the inspected Facility is operated by an entity other than the owner, a list of additional facilities operated by the operator

of the inspected Facility, including the name, location, and total number of employees at each facility. For each additional facility listed, please provide the following information:

- a. Whether each additional facility is subject to the Oil Pollution Prevention regulations (40 C.F.R. Part 112);
- b. For those facilities that are subject to the Oil Pollution Prevention regulations indicate whether the facility has a written, Professional Engineer-certified SPCC Plan or a written, self-certified SPCC Plan, and whether the SPCC Plan is being fully implemented at the facility; and
- c. For facilities that are required to have an SPCC Plan but either do not have one or are not fully implementing their SPCC Plan, provide a time frame for when the facility is expected to be in compliance with the Oil Pollution Prevention regulations.

5. If the Facility is developing an updated SPCC Plan post-inspection, please also include the following information:

- a. The cost of preparing the new SPCC Plan;
- b. The cost of implementing the new SPCC Plan (including the cost of constructing additional secondary containment at the Facility); and
- c. The ongoing annual costs of implementing the new SPCC Plan, over and above the annual costs of the old SPCC Plan (including training, inspections and record keeping).

The following additional information is also requested related to your Facility's compliance with the Emergency Planning and Community Right-to-Know Act ("EPCRA") and should be provided within thirty (30) calendar days of your receipt of this letter:

6. With respect to EPCRA:

- a. Are you required to prepare or have available a Material Safety Data Sheet ("MSDS") for any "hazardous chemical" present at your Facility, pursuant to the Occupational Safety and Health Act ("OSHA") of 1970?¹
- b. If you are required to have available a MSDS for any chemicals at your Facility, did the maximum amount of each of those chemicals in any of the past five calendar years exceed the minimum threshold of 10,000 pounds? If any chemical is considered an "extremely hazardous substance," a lower threshold amount would be applicable to that chemical, pursuant to 40 C.F.R. Part 355, Appendices A and B. Please provide both the maximum daily quantity and average quantity of each chemical that exceeded the applicable minimum threshold level in any of the past five calendar years.

¹ MSDS requirements are specified in the OSHA Hazard Communication Standard ("HCS") found in 29 C.F.R. § 1910.1200. "Oil" is considered a hazardous chemical.

- c. If your Facility was required to have available a MSDS for any hazardous chemical and one or more chemicals exceeded the minimum threshold level set forth in 40 C.F.R. Part 355, have you submitted an inventory form (Tier II) including those chemicals to the State Emergency Response Commission, the Local Emergency Planning Committee, and the local fire department? If your answer is yes, please provide copies of the Tier II forms filed since January 1, 2002. If your answer is no, please state the reason why no Tier II form was filed.

Answers to the above set of questions shall be sent to:

Alex Sherrin (HBR)
On-Scene Coordinator
U.S. Environmental Protection Agency
1 Congress St., Suite 1100
Boston, MA 02114-2023

Please be advised that noncompliance with the Oil Pollution Prevention regulations constitutes a violation of the Clean Water Act for which both injunctive relief and penalties can be sought.

EPA reserves its right to take further enforcement action pursuant to the Clean Water Act, and other applicable laws, including the right to seek penalties, for any violations detected at the above-referenced inspection. Although preparation and/or revision and submittal of an SPCC Plan to EPA does not preclude EPA from seeking penalties for violations of the Clean Water Act, your prompt response towards coming into full compliance with the Oil Pollution Prevention regulations will be taken into account in determining EPA's enforcement response.

Please be further advised that compliance with this information request is mandatory. Failure to respond fully and truthfully, or to adequately justify any failure to respond, within the time frame specified above, also constitutes a violation of the Clean Water Act subject to enforcement action, including the assessment of civil penalties. In addition, providing false, fictitious, or fraudulent statements or representations may subject you to criminal prosecution under 18 U.S.C. § 1001. If information or documents not known or available to you as of the date of submission of your response to this request should later become known or available to you, you must supplement your response to EPA. Moreover, should you find at any time after the submission of the response that any portion of the submitted information is false or misrepresents the truth, you must notify EPA of this fact as soon as possible, and provide a corrected response.

You may, if you desire, assert a business confidentiality claim covering part or all of the information requested in the manner described by 40 C.F.R. § 2.203(b). You should read the above-cited regulations carefully before asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim. If no such claim accompanies the information when it is received by EPA, the information may be made available to the public by EPA without further notice to you.

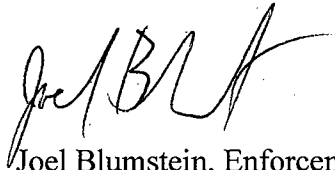
Enclosed with this information request letter is an information sheet intended to assist small businesses, as defined by the Small Business Administration ("SBA") at 13 C.F.R. Part 121.201, in understanding and complying with environmental regulations. EPA New England is routinely providing this information to businesses in the course of its enforcement activities, whether or

not they are small businesses as defined by the SBA. The Small Business Regulatory Enforcement and Fairness Act ("SBREFA") provides small businesses with the opportunity to submit comments on regulatory enforcement at the time of an agency enforcement activity. The enclosed Information Sheet provides information on this right, as well as information on compliance assistance that may be available to you. The Small Business Ombudsman may be reached at 1-800-368-5888. Please be aware that availing yourself of this opportunity does not relieve Downeast Energy of its responsibility to comply with federal law and this information request.

A Statement of Certification is enclosed with this letter. Your response to this Request must be accompanied by the certificate that is signed and dated by the person who is authorized to respond to the Request on behalf of the company. The certification must state that your response is complete and contains all information and documentation available to you that is responsive to the Request.

If you have any questions concerning your compliance with this letter, please contact Alex Sherrin, the Region I On-Scene Coordinator, directly at (617) 918-1252, or have your attorney contact Jeffrey Kopf, EPA's attorney in this matter, at (617) 918-1796. For your information, EPA has on its website (www.epa.gov/oilspill) a general guidance document on SPCC Plan preparation, including a model SPCC Plan.

Sincerely,



Joel Blumstein, Enforcement Manager
Office of Environmental Stewardship

Enclosure

cc: Jeffrey Kopf, Senior Enforcement Counsel, EPA Region 1
Don Grant, Spill-SPCC Enforcement Coordinator, EPA Region 1
Chris Rascher, Environmental Engineer, EPA Region 1
Butch Bowie, MEDEP
Stephen Brezinski, MEDEP
Scott Collins, St. Germain & Associates, Inc.

Statement of Certification for Downeast Energy

(To be returned with Response to Information Request)

I declare under penalty of perjury that I am authorized to respond on behalf of Downeast Energy, I certify that the foregoing responses and information submitted were prepared under my direction or supervision and that I have personal knowledge of all matters set forth in the responses and the accompanying information. I certify that the responses are true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

By _____
(Signature)

(Title)
